

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1471 OF 2020

Pravin Dattatray More & others

Applicants

Versus

The State of Maharashtra & another

Respondents

Mr. Satej S. Jadhav, advocate for applicants

Mrs. P. V. Diggikar, Assistant Public Prosecutor for the
Respondent-State.

**CORAM : SUNIL P. DESHMUKH &
NITIN B. SURYAWANSHI, JJ.**

DATE : 02nd September, 2021.

PC :

1. The applicants, by this application, seek quashing of the First Information Report in Crime No.129/2018, registered with Pachora Police Station, District Jalgaon, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

2. Respondent No.2 lodged First Information Report alleging therein that his father was working at Pachora MSEB Sub Division, as Assistant Accountant. While working there, the applicants no. 2 & 3 used to quarrel with him and with a view to harass him, they used to talk about him. Though his father

complained about the behaviour of applicants no. 2 & 3 to the Executive Engineer/applicant no.1, nothing was done in that behalf and the applicant no.1 neglected the complaint made by the deceased. Being disturbed by the harassment at the behest of applicants no. 2 and 3, the deceased committed suicide on 06.09.2017. The FIR came to be lodged on 13.10.2018 i.e. almost after thirteen months from the date of the incident.

3. The learned advocate for the applicants submitted that no offence under Section 306 is made out in the entire FIR. Applicant no.1 is the Executive Engineer and applicants no.2 and 3 are the subordinates of the deceased. He contends that no ingredients of Sections 107 and 109 of the Indian Penal Code are made out in the entire complaint. In support of his argument, he placed reliance on the Division Bench judgment in the matter of **Dilip Ramrao Shirasao & others Vs. State of Maharashtra & another**, 2016 (5) Mh.L.J. (Cri.). 323.

4. The learned Additional Public Prosecutor, on the other hand, submitted that because of the harassment caused by the applicants, the deceased had committed suicide. By relying upon the averments in the FIR, she submits that two chits were found

with the deceased at the time of *post mortem*, those were of 10th August, 2017 and 05th September, 2017, which were addressed to applicant no.1 – Executive Engineer, wherein the deceased had made a grievance that his subordinates (applicants no. 2 & 3) were not working properly due to which he was suffering from mental harassment. When the said fact was informed to applicant no.1/Executive Engineer, he told the deceased that he should do his own work and neglected his complaint. By relying on these two chits, the learned Assistant Public Prosecutor submits that there is sufficient material in the First Information Report itself to involve the applicants in this crime. She also submitted that the charge sheet is already filed and let the trial may go on.

5. Even if the allegations made in the First Information Report and the material collected during the course of investigation are taken as it is, there is no material against the applicants showing that applicants, intentionally or in any manner, engaged themselves in abetting or instigating the deceased to commit suicide. To prove the charge under Section 306 of the Indian Penal Code, ingredients of Section 107 of the Indian Penal Code are required to be made out. There must be an ‘abetment’ under

Section 107 of the Indian Penal Code. The proof of direct or indirect acts of incitement to commit suicide are essential. The scope and meaning of 'abetment' under Sections 107 and 306 of the Indian Penal Code is explained by the Hon'ble Supreme Court in catena of decisions right from the case of **Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh**, 2002 Cri.L.J. 2796; **Madan Mohan Singh Vs. State of Gujrat and another** (2010) 8 SCC 628; and in **S.S.Chheena Vs. Vijay Kumar Mahajan**, 2010 ALL MR (Cri) 3298 (S.C.).

6. In **Dilip Ramrao Shirasao** (*supra*) , this Court has held thus:

“19 The question would be as to whether the fact of a person being disturbed on account of official act done by a superior would be sufficient to book such a superior officer for the offence punishable under Section 306 of the Indian Penal Code or not. We find that the issue is squarely answered by the Apex Court in Madan Mohan Singh's case cited *supra*.

20 As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is

necessary for the prosecution to at least *prima facie* established that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear *mens rea* to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

7. The aforestated observations are squarely applicable to the facts of the present case. We find no material to sustain the charge under Section 306 of the Indian Penal Code in the material collected during the course of the investigation. There is no material on record to establish that the applicants had an intention to aid or instigate or abet the deceased to commit suicide. In absence of such material, continuation of the prosecution of the

applicants would be an abuse of process of law. In the light of this settled legal position and considering the fact that the First Information Report and the material collected during the course of the investigation do not spell out any ingredients of Section 306 of the Indian Penal Code, charge against the applicants is groundless and the proceedings are liable to be quashed.

8. In the result, the proceedings of First Information Report in Cr. No.129/2018, registered with Pachora Police Station, District Jalgaon, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, and further proceedings, in pursuance of the same, are hereby quashed and set aside.

(NITIN B. SURYAWANSHI)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

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